

Application No. 10/805,175
Amendment "C"
Reply to Final Action mailed Feb. 3, 2006

REMARKS

Applicant expresses appreciation to the Examiner for the additional interview conducted with applicant's representative. In particular, the additional time and effort taken by the Examiner to clarify his reasoning in regard to certain of the issues raised in the Final Action were most helpful and appreciated. The claims have been amended to address the Examiner's issues and to continue to resolve and narrow those issues with the objective of fully resolving the case. Thus, independent claims 1, 9, 23 and 24 have each been amended. Minor amendments to the specification have been made to correct grammatical or spelling errors, or to otherwise reference subject matter already shown in the drawings or disclosed in the claims as filed, and is thus is not new matter.

By this paper claims 1 – 24 are presented for reconsideration, of which claims 1, 9, 23 and 24 are independent.

In the Final Action, independent claims 23 and 24 and dependent claims 2 – 8 and 10 – 22 were rejected under 35 U.S.C. § 112, first and second paragraphs, noting that the disclosure does not describe "an off-axis means" in *addition* to the container and mixing assembly. Thus, for this reason the disclosure was viewed as not supporting claims 23 and 24 and their depending claims, as well as rendering those claims indefinite.

Applicant has amended claims 23 and 24 to clarify that "the container and the mixing assembly are arranged in relation to one another so that together they provide an off-axis means" As discussed at the interview, this clearly constitutes a proper recitation in the sense that it is a further description that defines that it is the relationship or arrangement between these two elements that provides the desired means for performing the function. Moreover, as discussed, this recitation of the container and mixing assembly does not render the functional limitation non-functional since clearly there are a variety of different ways in which the structure may be combined or arranged to accomplish the claimed function.¹ Accordingly, reconsideration and withdrawal of these rejections is respectfully requested in view of the further amendments made to clarify this point in the claims.

¹ As stated in the specification (p. 4 lines 12 – 19), "The off-axis or non-concentric goblet 10, and the non-colinear axes 26 and 34, can be described in various ways. The longitudinal and rotational axes 26 and 34 can be angled or divergent with respect to one another. In addition, the longitudinal and rotational axes 26 and 34 can be offset or spaced apart with respect to one another. In addition, the longitudinal and rotational axes can be oriented transverse with respect to one another, so that they intersect on one another but are oriented at different angular orientations. Furthermore, the rotational axis 34 can be oriented substantially vertical, while the longitudinal axis 26 can be oriented at an acute angle θ with respect to vertical." Thus, clearly the container and mixing assembly can be "arranged in relation to one another so that together they provide an off-axis means" in a variety of different ways.

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Since the means-plus-function limitation of claims 23 and 24 were viewed as not further defining the claims beyond "what is already required by the other limitations of the claims," (Final Action at ¶ 4) claims 23 and 24 and dependent claim 8 depending from them were also rejected under 35 U. S. C. § 102(b) as anticipated by U. S. Patent No. 6,527, 433 (Daniels). In other words, in the absence of any weight given to the recited means-plus-function limitation, the claims were viewed as anticipated by Daniels since Daniels clearly shows a container and a mixing assembly.

Reconsideration and withdrawal of this rejection is respectfully requested as discussed at the interview, in view of the clarifying amendments to claims 23 and 24 as discussed above. It was clearly acknowledged that Daniels shows nothing in regard to an off-axis means, hence with the clarifying amendments made to claims 23 and 24, that recitation should now be given patentable weight and due consideration as differentiating the prior art, especially Daniels.

Lastly, the independent claims (and all dependent claims except claim 8) were also rejected in the Final Action under 35 U.S.C. § 102(b) as anticipated by newly cited U. S. Patent No. 2,688,473 ("Posch").

As noted at the interview, Posch discloses an apparatus for both mixing and conveying plaster. Posch's apparatus is a metal cylindrical container body or casing 1. Col. 2 lines 39 – 41. One of the specific objects of Posch's invention is "that intermittently the machine is mixing but *continuously* conveying." Col. 2 lines 6 – 7, emphasis added. In accordance with this object of Posch's invention, the interior of the apparatus is divided into an upper mixing chamber 3 (see fig. 2), and a lower chamber 4 that houses a pump for conveying the mixed plaster out of the mixing chamber. See col. 4 lines 44 – 48. The bottom of the mixing chamber 3 is formed by an inclined bottom member 2 "preferably welded to the internal sides of the casing 1." Col. 2 lines 45 – 46. The bottom member 2 is provided with an exit 23 at the sloping lowest point of the bottom member. The exit 23 can be closed by a slide valve 24. A suction pipe 25 is part of a conveying pump 26 which is used to pump the mixed plaster from exit 23 at the sloped bottom plate or member 2, through the suction pipe 25. Propeller blades 12 located near the lowest point of the inclined bottom member 2 mix the plaster material, which is introduced through a sieve 8 at the top of the apparatus. See, col. 3, lines 3 – 42.

Independent claims 1 and 23 are directed to an off-axis goblet device "configured for use with a motorized base as a food mixer." The off-axis goblet is defined in the claims as including a container wall that has an upper edge forming an opening which defines an open upper end of

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the goblet, and a lower opening adapted for horizontal coupling to a mixing assembly. Further, the container wall has a longitudinal axis substantially centered at one end within a plane defined on one end of the longitudinal axis by the open upper end of the goblet, and substantially centered at the other end of the axis within a horizontal plane defined on the other end of the axis by the lower opening.

The mixing assembly is defined as comprising a base cap to close the lower opening of the container wall. The base cap has a lower horizontal edge "adapted for horizontal placement on the motorized base," and which is also "removably couplable to the container wall so that the mixing assembly can be removed for cleaning." The mixing assembly also comprises a plurality of blades engageable with the drive mechanism and disposable within the container wall so as to be centered near the bottom of the container wall when the mixing assembly is coupled to said lower opening of the container wall, with the blades being spaced away from the sides of the container wall and mounted about a single rotational axis.

Lastly, claim 1 defines the container wall and the mixing assembly as being angled relative to one another in that the plane defined by said open upper edge of the goblet is not perpendicular relative to the rotational axis of the mixing assembly so as to form an off-axis configuration resulting in more efficient mixing action. Independent claim 23 corresponds to claim 1 but differs in that it defines the container wall and mixing assembly as being arranged so that together they provide "an off-axis means for creating a non-uniform vortex in material within the container when the mixing assembly operates to mix the material within the container" as noted and discussed previously herein and at the interview.

Claims 9 and 24 are similar to claims 1 and 23 except that they are directed to a food mixer which includes "a base with a horizontal bottom and a motor capable of turning a drive mechanism extending therefrom" in combination with the off-axis goblet device (e.g., the container wall and mixing assembly) mountable on the base.²

² As originally discussed at the Interview, the Examiner noted his concern that the term horizontal, by itself, did not provide sufficient particularity and could be viewed as a mere "intended use" in respect to how the goblet device is situated. Accordingly, claims 9 and 24 (directed to a food mixer that includes a motorized base, and a goblet device comprised of a container wall and mixing assembly) have been further amended as a result of that discussion to state that the container wall of the goblet device is enclosed at its lower opening by a base cap of the mixing assembly that has a lower horizontal edge adapted for horizontal placement on the motorized base, and the base in turn is defined as having a horizontal bottom. This would appear to satisfy the Examiner's concern as to those claims (see the Interview Summary).

As to claims 1 and 23 (directed to a goblet device "adapted for use with a motorized base as food mixer), the Examiner expressed lingering concern as to whether the nature of the proposed amendment to those claims (see, e.g. the Interview Summary) was adequate since the base is not positively recited. In response to this concern, note

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Posch does not anticipate the goblet device (claims 1 and 23) or food mixer (claims 9 and 24) as claimed herein by applicant. Applicant's claimed goblet and food mixer require that the container wall has a "lower opening adapted for horizontal coupling to a mixing assembly" and in turn, the mixing assembly includes "a base cap to close said lower opening of the container wall," as well as "a lower horizontal edge" of the base cap that is "adapted for horizontal placement on the motorized base." Further, the base cap is "removably couplable to the container wall so that the mixing assembly can be removed for cleaning."

In contrast, there is no teaching (either express or implied) in Posch as to a container that is separately removable from a mixing assembly, and that can be enclosed at its bottom by a separate a base cap that encloses the lower opening of the container wall and that in turn is horizontally couplable to a motorized base having a horizontal bottom. Posch teaches a container for mixing plaster, which has a sloped bottom plate welded to the inside walls of the container. Posch's welded sloping bottom plate is not horizontally couplable to any kind of removable base cap which in turn is horizontally coupled to a motorized base. Posch's motor assembly is angled and is secured to the underside of the sloped bottom 2, specifically so that the propeller blades will be located at the bottom of the incline provided by the sloping bottom 2, thus facilitating mixing and removal of the mixed plaster through the opening 23 located at the bottom of the incline and above the suction pump 26.

Moreover, and in any event, Posch clearly does not teach "a mixing assembly, disposable within the container so as to be *centered near the bottom* of the container." Emphasis added. As noted, Posch specifically teaches that "In the mixing chamber 3 and *near the lowest point of its inclined bottom member 2*, there are mounted . . . mixing propeller blades 12." Col. 3, lines 14 – 17 and lines 31 – 32. Emphasis added.

Posch's plaster mixer is manifestly different (indeed, remote) from applicant's claimed goblet device and food mixer as presented and claimed herein. Accordingly, applicant's claims are not anticipated by Posch, nor are they obvious over Posch either singly or in combination with any other prior art of record.³

that claims 1 and 23 have been further amended to recite the base cap of the mixing assembly so that like claims 9 and 24, the container is enclosed at its lower opening by a base cap of the mixing assembly that has a lower horizontal edge. Moreover, reference is also made in the preamble to the base, and that reference clearly provides a basis for describing the horizontal orientation of the base cap's lower horizontal edge as "being adapted for horizontal placement on the motorized base."

³ In that regard, applicant notes that Posch is not "analogous" art and would not, for that reason alone, be properly citable as to obviousness. "'To ascertain the scope of the prior art, a court examines 'the field of the inventor's endeavor.' *Shatterproof Glass Corp. v. Libbey-Owens Ford Co.*, 758 F.2d 613, 620 (Fed. Cir. 1985), and 'the

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In summary, neither Posch nor any other prior art of record teach or suggest the claimed combination as clarified, amended and presented herein for reconsideration. Accordingly, for at least the reasons noted, the claims are neither anticipated nor obvious over the prior art of record, and thus favorable reconsideration and allowance is respectfully requested.

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Respectfully submitted,



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particular problem with which the inventor was involved,' *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 1535 (Fed. Cir. 1983) (quoting *In re Wood*, 599 F.2d 1032, 1036 (CCPA 1979)), at the 'time the invention was made,' see 35 U.S.C. § 103(a)." *Monarch Knitting Machinery Corp. v. Sulzer Morat GmbH*, 139 F.3d 877, 881 (Fed. Cir. 1998). In other words, as explained by the Federal Circuit, "Two criteria have evolved for determining whether prior art is analogous: (1) whether the art is from the same field of endeavor, regardless of the problem addressed, and (2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved." *In re Clay*, 966 F.2d 656, 659 (Fed. Cir. 1992). Clearly, neither criteria are met here by Posch's plaster mixer of 1954, which has nothing to do with either the field of endeavor (food mixers) or the problems of achieving better blending of food materials, as addressed by applicant's claimed invention.